

HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NINTENDO OF AMERICA INC., a
Washington corporation,

Plaintiff,

v.

TROJAN TECHNOLOGY, INC., a corporation
organized under the laws of the R.O.C.,
WHAT'S ON, INC., EITAN AVRAHAM,
individually and d/b/a WHAT'S ON, INC.,
DANIEL KARPATI, individually and d/b/a
WHAT'S ON, INC., SER LLC, SHLOMI
BOARON, individually and d/b/a SER LLC,
EREZ MOR, individually and d/b/a SER LLC,
ASHER DANINO, MAESTRO NIMROD, the
Marital Communities of all individual
Defendants, AND DOES 1-10,

Defendants.

NO. CV 04-2185 C

DEFAULT JUDGMENT

The Court has considered Plaintiff Nintendo of America's ("Nintendo's") Motion for Default Judgment (Dkt. No. 76) against defendant Trojan Technology, Inc. ("Trojan"), together with all declarations and other papers filed in support of the motion. Based on the materials submitted and the other records and files in this case, as well as Defendant Trojan's failure to

respond to this Court's July 10, 2006 Order to Show Cause (Dkt. No. 79) after being served with the proposed default judgment on September 7, 2006 (Dkt. No. 89), the Court finds that:

1. Defendant Trojan was properly served with a copy of Plaintiff's summons and complaint.

2. This Court has personal jurisdiction over Trojan, and venue is proper in this district.

3. Trojan has neither appeared, answered nor otherwise responded to the complaint within the time permitted by the Federal Rules of Civil Procedure.

4. An order of default previously has previously been entered against Trojan.

5. Trojan is neither an infant, an incompetent, nor a person serving in the military of the United States.

6. As to Nintendo's first and second causes of action for trademark infringement under 15 U.S.C. §§ 1114 and 1125(a), and Washington State common law:

a. Nintendo owns the following ten trademarks, each of which is valid and enforceable and registered on the principal register of the United States Patent and Trademark Office:

Title	Registration No.
Balloon Fight	1454474
Donkey Kong (2)	1331984; 1328714
Duck Hunt	1377451
Excitebike	1379330
Hogan's Alley	1376107
Ice Climber	1467524
Mario Bros.	1303633
Super Mario Bros.	2345410
Wild Gunman	1400515

b. Trojan's actions constitute the use in interstate commerce of a reproduction, counterfeit, copy, or colorable imitation of registered trademarks of Nintendo in connection with the sale, offering for sale, distribution, or advertising of goods or services on or

1 in connection with which such use is likely to cause confusion or mistake, or to deceive, in
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3 violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114. The violations of Section 32 of the
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5 Lanham Act also constitute the use of a counterfeit mark, as defined in Section 34(d) of the
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7 Lanham Act, 15 U.S.C. § 1116(d);
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9 c. Trojan's actions constitute the use in interstate commerce of a false
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11 designation of origin, false or misleading description of fact, or false or misleading
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13 representation of fact which is likely to cause confusion or mistake, or to deceive as to the
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15 affiliation, connection, or association of the goods and services with Nintendo, or as to the
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17 origin, sponsorship, or approval of the goods and services provided by Trojan in violation of
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19 Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);
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21 d. Trojan's actions constitute trademark infringement under the common law
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23 of the State of Washington in that Trojan's use of Nintendo's trademarks in connection with
24
25 infringing video game products is likely to confuse a significant number of customers into
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27 believing that Trojan or Trojan's products are sponsored by or are otherwise associated with
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29 Nintendo, or that the parties' products come from a common source;
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31 e. Trojan knew of Nintendo's rights in Nintendo's trademarks and has
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33 knowingly, willfully and deliberately used Nintendo's trademarks in violation of Nintendo's
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35 rights;
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37 f. Trojan's false designation of origin has been knowing, willful and
38
39 deliberate, making this an exceptional case within the meaning of 15 U.S.C. § 1117; and
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41 g. Nintendo has been, and continues to be, damaged by such acts in a manner
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43 that cannot be fully measured or compensated in economic terms, and Nintendo has no adequate
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45 remedy at law. Trojan's acts have damaged, and threaten to continue to damage, Nintendo's
46
47 reputation and goodwill.
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49 7. As to Nintendo's third cause of action for copyright infringement under
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51 17 U.S.C. § 106 et seq.:

1 a. Nintendo owns the following 24 copyrights, each of which is valid and
 2
 3 enforceable:

Title	Registration No.
* Balloon Fight	PA 547 474
Baseball	PA 518 656
Donkey Kong	PA 547 470
Donkey Kong 3	PA 191 724
Excitebike	PA 547 466
Hogan's Alley	PA 260 315
Ice Climber	PA 547 463
Mario Bros.	PA 178 079
Pinball	PA 547 460
"Popeye" Audio-Visual Game	PA 154 248
Soccer	PA 547 458
Super Mario Bros.	PA 273 028
VS. Balloon Fight	PA 247 651
VS. Baseball	PA 219 072
VS. Clu Clu Land	PA 246 926
VS. Duck Hunt	PA 254 151
VS. Excitebike	PA 254 906
VS. Golf	PA 246 462
VS. Ice Climber	PA 254 907
VS. Pinball	PA 247 092
VS. Soccer	PA 288 502
VS. Tennis	PA 204 665
VS.*Soccer	PA 606 776
Wild Gunman	PA 284 965

35 b. Trojan's actions constitute a violation of Nintendo's exclusive rights in its
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 37 copyrighted works under 17 U.S.C. § 106. Trojan's actions constitute actual and direct
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 39 infringement of Nintendo's copyrights in violation of 17 U.S.C. § 501;
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41 c. Trojan knew of Nintendo's exclusive rights under the copyright laws of the
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 43 United States. Trojan's acts in violation of Nintendo's rights have been willful and deliberate;
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 45 and
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47 d. Nintendo has been, and continues to be, damaged by such acts in a manner
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 49 that cannot be fully measured or compensated in economic terms, and Nintendo has no adequate
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1 remedy at law. Trojan's acts have damaged, and threaten to continue to damage, Nintendo's
2 reputation and goodwill.
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5 8. As to Nintendo's fourth cause of action for violation of the Washington Unfair
6 Business Practices-Consumer Protection Act, RCW 19.86.020, the Court finds that:
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9 a. Trojan's actions constitute unfair methods of competition and unfair or
10 deceptive acts or practices in the conduct of trade or commerce;
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13 b. Trojan's conduct affected and was contrary to the public interest, tended to
14 mislead a substantial portion of the public, and has injured Nintendo in its business and property
15 in the State of Washington; and
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17
18 c. Nintendo has been, and continues to be, damaged by such acts in a manner
19 that cannot be fully measured or compensated in economic terms, and Nintendo has no adequate
20 remedy at law. Trojan's acts have damaged, and threaten to continue to damage, Nintendo's
21 reputation and goodwill.
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24 Based on these findings, and it being determined that no further proceedings are
25 necessary before the entry of a default judgment and that such default judgment should be
26 entered, it is hereby
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29 ORDERED AND ADJUDGED that:
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32 1. Nintendo's Motion for Default Judgment is GRANTED.
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35 2. Judgment is entered in favor of Nintendo and against Trojan on Nintendo's
36 complaint.
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39 3. Trojan, its officers, agents, servants, employees, attorneys, heirs, successors, and
40 assigns, and any persons acting in active concert or participation with Trojan are hereby
41 immediately and permanently and forever enjoined from doing or causing the following to be
42 done in the United States:
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45 a. using, or inducing or enabling others to use, Nintendo's trademarks or any
46 reproduction, counterfeit, copy, or colorable imitation of said trademarks in any manner in
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1 connection with the manufacture, printing, distribution, advertising, offering for sale or sale of
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3 any goods or merchandise;

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5 b. using, or inducing or enabling others to use, Nintendo's trademarks or any
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7 reproduction, counterfeit, copy, or colorable imitation of said trademarks in any manner likely to
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9 cause others falsely to believe that Trojan's products are connected with Nintendo or are
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11 legitimate Nintendo products bearing the Nintendo Marks (hereinafter "Authorized Nintendo
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13 Products") when they are not;

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15 c. passing off, inducing, or enabling others to sell or pass off any products
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17 that are not Authorized Nintendo Products as authorized Nintendo products;

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19 d. committing any other acts calculated to cause purchasers to believe that
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21 the Trojan's products are Authorized Nintendo Products unless they are such;

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23 e. copying, distributing, or otherwise using any portion of Nintendo's
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25 copyrighted video game software, or any colorable imitation thereof, in any manner in the
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27 importation, manufacture, assembly, distribution, advertisement, promotion, offering for sale, or
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29 sale of goods or merchandise;

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31 f. importing, selling, distributing, lending, publicly performing or playing
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33 any unauthorized copy of any Nintendo copyrighted work;

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35 g. shipping, delivering, distributing, transferring, returning, holding for sale,
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37 destroying, or otherwise moving, storing or disposing of any infringing video game products or
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39 any components thereof or any other item or product bearing or used to reproduce any
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41 unauthorized reproduction, counterfeit, copy or colorable imitation of Nintendo's trademarks
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43 and/or Nintendo's copyrights; and

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45 h. destroying, transferring, altering, moving, returning, concealing, or in any
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47 manner secreting any and all infringing video game products, any components thereof, and any
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49 and all computer tapes or disks, business records, documents, emails, purchaser names and
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51 addresses, order histories, books of accounts, receipts, specifications, packaging and containers

1 and other documentation relating or referring in any way to the manufacture, acquisition,
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3 assembly, distribution, advertisement, promotion, offer for sale or sale of any goods or
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5 merchandise incorporating any unauthorized reproduction, counterfeit, copy or colorable
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7 imitation of Nintendo's copyrighted video game software, Nintendo's trademarks and/or
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9 Nintendo's copyrights, or otherwise infringing Nintendo's intellectual property rights.

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11 i. marketing, selling, importing, supplying or otherwise providing any
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13 software or device that contributes to or induces the copying of Nintendo's copyrighted video
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15 game software; and

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17 j. unfairly competing with Nintendo.

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19 4. Pursuant to 15 U.S.C. § 1117(c)(2), Trojan shall pay Nintendo \$10,000,000 in
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21 statutory damages (statutory maximum of \$1,000,000 each for 10 infringed trademarks).

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23 5. Pursuant to 17 U.S.C. § 504(c)(2), Trojan shall pay Nintendo \$3,600,000 in
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25 statutory damages (statutory maximum of \$150,000 each for 24 infringed copyrights).

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27 6. Pursuant to 15 U.S.C. §§ 1125(c) and 1117(a), 17 U.S.C. § 505, and RCW
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29 19.86.090, Trojan shall pay Nintendo its attorneys' fees and costs in the amount of \$190,000.

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31 7. This judgment shall accrue interest, compounded annually, pursuant to 28 U.S.C.
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33 § 1961.

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35 8. This Court retains jurisdiction over this case for the purpose of enforcing this
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37 judgment.

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39 DATED this 6th day of February, 2007.

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HONORABLE JOHN C. COUGHENOUR
UNITED STATES DISTRICT COURT

Presented by:

s/ Susan Fahringer

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